APPENDIX A — COMPLAINT OF BANKVEST CAPITAL CORP. AGAINST EAGLE INSURANCE COMPANY, ET AL. DATED OCTOBER 17, 2003

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO.
03-4936-C

SUFFOLK, ss.

BANKVEST CAPITAL CORP.,

Plaintiff,

v.

EAGLE INSURANCE COMPANY, NEWARK INSURANCE COMPANY and MATERIAL DAMAGE ADJUSTMENT CORP.,

Defendants.

COMPLAINT

INTRODUCTION

Plaintiff BankVest Capital Corp. seeks to collect amounts due under and pursuant to a defaulted equipment lease from lessee Eagle Insurance Company and guarantors Newark Insurance Company and Material Damage Adjustment Corp. and to recover possession of leased property which defendants refuse to return.

Appendix A

PARTIES

1. Plaintiff BankVest Capital Corp. is a Massachusetts corporation.

2. Defendant Eagle Insurance Company is an insurance company organized under the laws of the State of New York with a principal place of business in Bethpage, New York.

3. Defendant Newark Insurance Company is an insurance company organized under the laws of the State of New York with a principal place of business in Bethpage, New York.

4. Defendant Material Damage Adjustment Corp. is a corporation organized under the laws of the State of New York with a principal place of business in Bethpage, New York.

JURISDICTION AND VENUE

5. This Court has jurisdiction of this civil action which seeks damages and judgment for possession of plaintiff's property. Mass. Gen. Laws ch. 212, § 4.

6. This Court has venue of this civil action which is between parties nonresident. Mass. Gen. Laws Ann. ch. 223, § 1.

Appendix A

COUNT I

(Breach of Equipment Lease dated as of May 27, 1999)
(BankVest Capital Corp. v. Eagle Insurance Company)

7. The allegations contained in paragraphs 1 through 6 are realleged as if fully set forth in this paragraph.

8. On or about May 27, 1999, defendant Eagle Insurance Company "Eagle") executed a Master Equipment Lease Agreement (the "Lease"). A true and correct copy of the Lease is attached hereto and marked as Exhibit A.

9. On or about June 29, 1999, Eagle executed Lease Schedule No. 001 (the "Schedule"). A true and correct copy of the Schedule is attached hereto and marked as Exhibit B.

10. On or about August 25, 1999, Eagle executed an Acceptance Certificate (the "Certificate"). A true and correct copy of the Certificate is attached hereto and marked as Exhibit C.

11. Under the Lease, the Schedule and the Certificate, Eagle agreed to pay the lessor $12,955.56 per month for forty-eight months ($11,940.61 per month plus sales and use tax of $1,014.95 per month).

12. The Lease was of computer equipment (the "Property") which was acquired for and received by Eagle at its direction at the start of the Lease. The Property has not been returned to plaintiff.

13. The Lease is governed by Massachusetts law and defendants consented to the jurisdiction of, and venue in, any court located within Massachusetts.

14. Plaintiff BankVest Capital Corp. is the owner and holder of the Lease.

15. Eagle has failed and refused to make payments which are due under the Lease and has otherwise defaulted in its obligations thereunder.

16. Under and pursuant to the terms of the Lease, Eagle is liable to pay: (A) $608,911.32 (47 past due payments of $12,955.56); (B) late charges and fees; (C) interest, costs and attorneys' fees and expenses; *plus* (D) other amounts due under the Lease *less* (E) any repossession proceeds (should the Property be recovered from defendant).

17. Eagle owes BankVest Capital Corp. $608,911.32+ under and pursuant to the terms of the Lease, plus late charges, interest, costs and attorneys' fees.

18. Eagle has failed to return the Property to BankVest Capital Corp.

19. Eagle does not own the Property and should be ordered to return the Property to BankVest Capital Corp.

Appendix A

COUNT II

(Breach of Guaranty)
(BankVest Capital Corp. v. Newark Insurance Company)

20. The allegations contained in paragraphs 1 through 19 are realleged as if fully set forth in this paragraph.

21. On or about June 29, 1999, the defendant Newark Insurance Company ("Newark") executed a guaranty of the Lease (the "Newark Guaranty"). A true and correct copy of the Newark Guaranty is attached hereto as Exhibit D.

22. The Newark Guaranty is governed by Massachusetts law and Newark consented to the jurisdiction of, and venue in, any court located within Massachusetts.

23. Eagle has defaulted in the performance of its obligations under the Lease and owes $608,911.32+, plus late charges, interest, costs and attorneys' fees, to BankVest Capital Corp.

24. Newark owes $608,911.32+ to BankVest Capital Corp. under and pursuant to the terms of the Newark Guaranty and the Lease, plus late charges, interest, costs and attorneys' fees.

Appendix A

COUNT III

(Breach of Guaranty)
(BankVest Capital Corp. v. Material Damage Adjustment Corp.)

25. The allegations contained in paragraphs 1 through 19 are realleged as if fully set forth in this paragraph.

26. On or about June 29, 1999, the defendant Material Damage Adjustment Corp. executed a guaranty of the Lease (the "Material Guaranty"). A true and correct copy of the Material Guaranty is attached hereto as Exhibit E.

27. The Material Guaranty is governed by Massachusetts law and Material Damage Adjustment Corp. consented to the jurisdiction of, and venue in, any court located within Massachusetts.

28. Eagle has defaulted in the performance of its obligations under the Lease and owes $608,911.32+, plus late charges, interest, costs and attorneys' fees, to BankVest Capital Corp.

29. Material Damage Adjustment Corp. owes $608,911.32+ to BankVest Capital Corp. under and pursuant to the terms of the Material Guaranty and the Lease, plus late charges, interest, costs and attorneys' fees.

WHEREFORE, plaintiff BankVest Capital Corp. prays that this Court will enter the following relief:

1. Judgment for plaintiff BankVest Capital Corp. against defendants, jointly and severally, for $608,911.32 plus late charges, costs and all other amounts due under the Lease or guaranties, bearing interest as provided for in the Lease and under applicable law;

2. Judgment for plaintiff BankVest Capital Corp. against defendant Eagle Insurance Company for immediate possession of the Property described above, and that plaintiff's judgment be reduced by such amount as plaintiff receives from the sale, lease or other disposition of the Property as provided in the Lease after deducting costs and expenses of recovery and sale of the Property;

3. Judgment against defendants, jointly and severally, for plaintiff's reasonable attorney fees and expenses; and

4. Such other and further relief as is just.

BANKVEST CAPITAL CORP.

By its attorneys,
s/ Frederic D. Grant, Jr.
Frederic D. Grant, Jr.
BBO No. 543115
GRANT & RODDY
44 School Street, Suite 400
Boston, Massachusetts 02108-4200
(617) 248-8700 (Ext. 24) (Grant)

Appendix A

Dated: October 17, 2003
80400626
325014

[Exhibits A-E of Appendix A Intentionally Omitted]

APPENDIX B — COMPLAINT OF BANKVEST CAPITAL CORP. AGAINST NEWARK INSURANCE COMPANY, ET AL. DATED OCTOBER 17, 2003

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO.
03-4937-E

SUFFOLK, ss.

BANKVEST CAPITAL CORP.,

Plaintiff,

v.

NEWARK INSURANCE COMPANY, EAGLE INSURANCE COMPANY and MATERIAL DAMAGE ADJUSTMENT CORP.,

Defendants.

COMPLAINT

INTRODUCTION

Plaintiff BankVest Capital Corp. seeks to collect amounts due under and pursuant to a defaulted equipment lease from lessee Newark Insurance Company and guarantors Eagle Insurance Company and Material Damage Adjustment Corp. and to recover possession of leased property which defendants refuse to return.

Appendix B

PARTIES

1. Plaintiff BankVest Capital Corp. is a Massachusetts corporation.

2. Defendant Newark Insurance Company is an insurance company organized under the laws of the State of New York with a principal place of business in Bethpage, New York.

3. Defendant Eagle Insurance Company is an insurance company organized under the laws of the State of New York with a principal place of business in Bethpage, New York.

4. Defendant Material Damage Adjustment Corp. is a corporation organized under the laws of the State of New York with a principal place of business in Bethpage, New York.

JURISDICTION AND VENUE

5. This Court has jurisdiction of this civil action which seeks damages and judgment for possession of plaintiff's property. Mass. Gen. Laws ch. 212, § 4.

6. This Court has venue of this civil action which is between parties nonresident. Mass. Gen. Laws Ann. ch. 223, § 1.

Appendix B

COUNT I

(Breach of Equipment Lease dated as of May 27, 1999)
(BankVest Capital Corp. v. Newark Insurance Company)

7. The allegations contained in paragraphs 1 through 6 are realleged as if fully set forth in this paragraph.

8. On or about May 27, 1999, defendant Newark Insurance Company ("Newark") executed a Master Equipment Lease Agreement (the "Lease"). A true and correct copy of the Lease is attached hereto and marked as Exhibit A.

9. On or about June 29, 1999, Newark executed Lease Schedule No. 002 (the "Schedule"). A true and correct copy of the Schedule is attached hereto and marked as Exhibit B.

10. On or about August 25, 1999, Newark executed an Acceptance Certificate (the "Certificate"). A true and correct copy of the Certificate is attached hereto and marked as Exhibit C.

11. Under the Lease, the Schedule and the Certificate, Newark agreed to pay the lessor $10,111.82 per month for forty-eight months.

12. The Lease was of computer equipment (the "Property") which was acquired for and received by Newark at its direction at the start of the Lease. The Property has not been returned to plaintiff.

Appendix B

13. The Lease is governed by Massachusetts law and defendants consented to the jurisdiction of, and venue in, any court located within Massachusetts.

14. Plaintiff BankVest Capital Corp. is the owner and holder of the Lease.

15. Defendant Newark has failed and refused to make payments which are due under the Lease and has otherwise defaulted in its obligations thereunder.

16. Under and pursuant to the terms of the Lease, Newark is liable to pay: (A) $475,255.54 (47 past due payments of $10,111.82); (B) late charges and fees; (C) interest, costs and attorneys' fees and expenses; *plus* (D) other amounts due under the Lease *less* (E) any repossession proceeds (should the Property be recovered from defendant).

17. Newark owes BankVest Capital Corp. $475,255.54+ under and pursuant to the terms of the Lease, plus late charges, interest, costs and attorneys' fees.

18. Newark has failed to return the Property to BankVest Capital Corp.

19. Newark does not own the Property and should be ordered to return the Property to BankVest Capital Corp.

Appendix B

COUNT II

(Breach of Guaranty)
(BankVest Capital Corp. v. Eagle Insurance Company)

20. The allegations contained in paragraphs 1 through 19 are realleged as if fully set forth in this paragraph.

21. On or about June 29, 1999, the defendant Eagle Insurance Company ("Eagle") executed a guaranty of the Lease (the "Eagle Guaranty"). A true and correct copy of the Eagle Guaranty is attached hereto as Exhibit D.

22. The Eagle Guaranty is governed by Massachusetts law and Eagle consented to the jurisdiction of, and venue in, any court located within Massachusetts.

23. Newark has defaulted in the performance of its obligations under the Lease and owes $475,255.54+, plus late charges, interest, costs and attorneys' fees, to BankVest Capital Corp.

24. Eagle owes $475,255.54+ to BankVest Capital Corp. under and pursuant to the terms of the Eagle Guaranty and the Lease, plus late charges, interest, costs and attorneys' fees.

Appendix B

COUNT III

(Breach of Guaranty) (BankVest Capital Corp. v. Material Damage Adjustment Corp.)

25. The allegations contained in paragraphs 1 through 19 are realleged as if fully set forth in this paragraph.

26. On or about June 29, 1999, the defendant Material Damage Adjustment Corp. executed a guaranty of the Lease (the "Material Guaranty"). A true and correct copy of the Material Guaranty is attached hereto as Exhibit E.

27. The Material Guaranty is governed by Massachusetts law and Material Damage Adjustment Corp. consented to the jurisdiction of, and venue in, any court located within Massachusetts.

28. Newark has defaulted in the performance of its obligations under the Lease and owes $475,255.54+, plus late charges, interest, costs and attorneys' fees, to BankVest Capital Corp.

29. Material Damage Adjustment Corp. owes $475,255.54+ to BankVest Capital Corp. under and pursuant to the terms of the Material Guaranty and the Lease, plus late charges, interest, costs and attorneys' fees.

Appendix B

WHEREFORE, plaintiff BankVest Capital Corp. prays that this Court will enter the following relief:

1. Judgment for plaintiff BankVest Capital Corp. against defendants, jointly and severally, for $475,255.54 plus late charges, costs and all other amounts due under the Lease or guaranties, bearing interest as provided for in the Lease and under applicable law;

2. Judgment for plaintiff BankVest Capital Corp. against defendant Newark Insurance Company for immediate possession of the Property described above, and that plaintiff's judgment be reduced by such amount as plaintiff receives from the sale, lease or other disposition of the Property as provided in the Lease after deducting costs and expenses of recovery and sale of the Property;

3. Judgment against defendants, jointly and severally, for plaintiff's reasonable attorney fees and expenses; and

4. Such other and further relief as is just.

BANKVEST CAPITAL CORP.

By its attorneys,
s/ Frederic D. Grant, Jr.
Frederic D. Grant, Jr.
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Boston, Massachusetts 02108-4200
(617) 248-8700 (Ext. 24) (Grant)

Appendix B

Dated: October 17, 2003
80400649
325039

[Exhibits A-E of Appendix B Intentionally Omitted]

APPENDIX C — ANSWER AND COUNTERCLAIM OF EAGLE INSURANCE COMPANY, ET AL. DATED APRIL 1, 2004

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
C.A. NO. 03-4936-C

BANKVEST CAPITAL CORP.,

Plaintiff,

v.

EAGLE INSURANCE COMPANY, NEWARK INSURANCE COMPANY and MATERIAL DAMAGE ADJUSTMENT CORP.,

Defendants.

ANSWER, COUNTERCLAIM AND JURY DEMAND

AND NOW, come Eagle Insurance Company ("Eagle"), Newark Insurance Company ("Newark") and Material Damage Adjustment Corp. ("MDAC") (collectively, the "Defendants") and respond to BankVest Capital Corp.'s ("BankVest") Complaint as follows:

1. Defendants lack the knowledge to either admit or deny the allegations contained in this paragraph and, therefore, deny same.

2. Admitted.

3. Admitted.

4. Admitted.

5. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

6. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

COUNT I

7. The foregoing paragraphs are incorporated by reference.

8. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit A to the Complaint is a true and correct copy of the Master Equipment Lease Agreement.

9. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit B to the Complaint is a true and correct copy of Lease Schedule No. 001.

10. Defendants admit that Eagle signed a document entitled "Acceptance Certificate." Defendants deny that Exhibit C to the Complaint is a true and correct copy of the document entitled Acceptance Certificate. By way of further response, Eagle executed the purported acceptance certificate

before the equipment was received and in reliance on BankVest's misrepresentation that it was its normal practice to obtain acceptance certificates before it delivered the equipment and that it would not claim the acceptance certificate had any legal effect unless and until the equipment was delivered in accordance with the lease.

11. The documents speak for themselves and any attempt to summarize or characterize them is denied.

12. Defendants deny that certain of the items listed in the Lease were acquired for and received by Eagle. As to the characterization of the Property as computer equipment, Defendants aver that the documents speak for themselves and any attempt to summarize or characterize them is denied. Defendants admit that Eagle has not returned to BankVest any of the items received by Eagle, but further avers that BankVest has not requested that Eagle return the portion of the equipment that Eagle did receive. Defendants further aver that Eagle is ready, willing and able to return to BankVest so much of the Property as BankVest owns, but it is unwilling to deliver to BankVest the equipment that was delivered to Eagle by the manufacturer as loaner-equipment and which equipment additionally is not described in or made a part of the Lease.

13. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

14. Defendants lack the knowledge to either admit or deny the allegations contained in this paragraph and, therefore, deny same.

Appendix C

15. Denied.

16. Denied.

17. Denied.

18. Defendants admit that Eagle has not returned to BankVest any of the items received by Eagle, but further avers that BankVest has not requested that Eagle return the portion of the equipment that Eagle did receive. Defendants further aver that Eagle is ready, willing and able to return to BankVest so much of the Property as BankVest owns, but it is unwilling to deliver to BankVest the equipment that was delivered to Eagle by the manufacturer as loaner equipment and which equipment additionally is not described in or made a part of the Lease.

19. Defendants admit that Eagle does not own the Property. The balance of the paragraph is denied.

COUNT II

20. Defendants incorporate the foregoing paragraphs.

21. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit D to the Complaint is a true and correct copy of the guaranty signed by Newark.

22. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

23. Denied.

24. Denied.

COUNT III

25. Defendants incorporate the foregoing paragraphs.

26. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit E to the Complaint is a true and correct copy of the guaranty signed by MDAC.

27. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

28. Denied.

29. Denied.

AFFIRMATIVE DEFENSES

1. BankVest's claims are barred by the defense of failure of consideration.

2. BankVest's claims are barred by its failure to deliver the equipment that was the subject of the lease between the parties.

3. BankVest's claims are barred by the defense of promissory estoppel.

4. BankVest's claims are barred by the doctrine of waiver.

5. BankVest's claims are barred on the grounds that it fraudulently induced Eagle to execute the so-called acceptance certificate.

6. The determination of whether BankVest may assume the Lease, pursuant to the provisions of section 365 of the Bankruptcy Code, has not been determined by final order. The foregoing claims are barred if BankVest ultimately rejects the Lease.

7. Count I is barred because BankVest breached the Lease before any alleged breach by Eagle.

8. Counts II and III are barred because BankVest materially altered the terms of the underlying agreement without the consent of the guarantors.

COUNTERCLAIMS

Facts

1. On or about May 27, 1999, Eagle entered into a Master Equipment Lease Agreement (the "Lease") with BankVest, pursuant to which Eagle was to lease from BankVest approximately 190 pieces of computer equipment (the "Equipment") over a period of 48 months.

2. The rent payments under the Lease were $11,940.61 per month.

3. At the time the Lease was entered into, each of the parties involved, including BankVest, knew that BankVest's

vendor, Nortel, would not complete production of approximately 20 items of the Equipment until several months later. Therefore, an arrangement was made between Eagle and Nortel for Nortel to deliver to Eagle loaner equipment that was similar to, but of a lesser grade than, the equipment that BankVest agreed to lease to Eagle. Nortel delivered the loaner equipment to Eagle in August 1999.

4. At or about the time that Nortel delivered the loaner equipment to Eagle, BankVest caused to be delivered to Eagle only some of the leased items that it was obliged to deliver. Excluded from the items delivered by BankVest were twenty critical items of equipment (the "Nondelivered Equipment"). The Nondelivered Equipment constituted 7 of 13 types of equipment to be delivered under the Lease and also accounted for sixty percent of the entire value of the leased goods.

5. The Nondelivered Equipment constituted the most critical components of the Equipment. Among the twenty items that had not been produced by the vendor were the computer modules and system software, while items of lesser value and importance such as power supply units, switches and cables had been produced and were delivered.

6. On December 17, 1999, an involuntary bankruptcy petition was filed against BankVest, before BankVest paid Nortel for any of the Equipment and before the Nondelivered Equipment was delivered.

7. Despite the passage of over four years, BankVest has still not delivered the Nondelivered Equipment nor has it offered to do so.

Appendix C

COUNT I
(Breach of Contract)

8. Eagle, Newark and MDAC incorporate the foregoing paragraphs.

9. BankVest breached its obligations under the Lease.

10. Eagle, Newark and MDAC have suffered damages as a result of BankVest's breach of the Lease.

COUNT II
(Fraud)

11. Eagle, Newark and MDAC incorporate the foregoing paragraphs.

12. BankVest sought to induce Eagle to sign an acceptance certificate, before delivery of the Equipment, by representing that BankVest would not claim that the acceptance certificate had any legal effect unless and until the Equipment was delivered in accordance with the Lease.

13. BankVest made the foregoing statements knowing that they were false or with reckless disregard for the truth.

14. Eagle relied on BankVest's material misrepresentations to its detriment by signing the acceptance certificate before receiving any of the Equipment.

15. Eagle, Newark and MDAC have suffered damages as a result of BankVest's misrepresentations.

Appendix C

COUNT III
(Promissory Estoppel)

16. Eagle, Newark and MDAC incorporate the foregoing paragraphs.

17. BankVest promised that it would not make use of the acceptance certificate until all of the equipment was delivered to Eagle.

18. Eagle, Newark and MDAC relied on the representations made by BankVest described in paragraph 17 hereof.

19. BankVest has and continues to use the acceptance certificate in breach of its promise to Eagle.

20. Eagle, Newark and MDAC have been harmed and continues to be harmed by BankVest's breach of its promise as described in paragraph 17 hereof.

COUNT IV
(Fraud)

21. Eagle, Newark and MDAC incorporate the foregoing paragraphs.

22. At the time that (i) BankVest and Eagle executed the Lease, (ii) Eagle executed the acceptance certificate and (iii) Newark and MDAC executed the guaranties, and for all times relevant thereafter, BankVest knew that it did not have the financial wherewithal to complete its obligations to deliver all of the equipment to Eagle as required by the Lease.

Appendix C

23. BankVest, in fact, did not have the financial wherewithal to deliver all of the equipment to Eagle.

24. Absent the concealment by BankVest of its dire financial condition, Eagle would not have entered into the Leases or signed the acceptance certificate. Similarly, without such concealment, the guarantors would not have signed the guaranties.

25. Eagle, Newark and MDAC have been harmed by the fraud committed by BankVest upon them.

COUNT V
(Rescission)

26. Eagle, Newark and MDAC incorporate the foregoing paragraphs.

27. BankVest's failure to deliver the Equipment constitutes a failure of consideration.

28. BankVest fraudulently induced Eagle to sign an acceptance certificate before any of the Equipment was delivered.

29. Eagle is ready, willing and able to return to BankVest so much of the Property as BankVest owns, is described in the Lease and has, in fact has been delivered or caused to be delivered by BankVest to Eagle thereunder.

30. Eagle, Newark and MDAC are entitled to rescission of the Lease and the guaranties.

WHEREFORE, Defendants respectfully request that the Court:

A. Enter judgment in favor of Defendants and against BankVest on Counts I through III of Plaintiff's Complaint;

B. Award damages to Eagle, Newark, and MDAC; and

C. Grant such further relief as the Court deems appropriate.

JURY DEMAND

Defendants demand a trial by jury on all counts so triable.

Respectfully submitted,

EAGLE INSURANCE COMPANY, NEWARK INSURANCE COMPANY and MATERIAL DAMAGE ADJUSTMENT CORP.

By their attorneys,

s/ Richard P. O'Neil
Joseph S.U. Bodoff (BBO #549116)
Evan Slavitt (BBO #466510)
Richard P. O'Neil (BBO #645214)
Bodoff & Slavitt LLP
225 Friend Street
Boston, MA 02114
(617)742-7300

Dated: April 1, 2004

[Certificate of Service Intentionally Omitted]

APPENDIX D — ANSWER AND COUNTERCLAIM OF NEWARK INSURANCE COMPANY, ET AL. DATED APRIL 1, 2004

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss — SUPERIOR COURT
C.A. NO. 03-4937-E

BANKVEST CAPITAL CORP.,

Plaintiff,

v.

NEWARK INSURANCE COMPANY, EAGLE INSURANCE COMPANY and MATERIAL DAMAGE ADJUSTMENT CORP.,

Defendants.

ANSWER, COUNTERCLAIM AND JURY DEMAND

AND NOW, come Newark Insurance Company ("Newark"), Eagle Insurance Company ("Eagle") and Material Damage Adjustment Corp. ("MDAC") (collectively, the "Defendants") and respond to BankVest Capital Corp.'s ("BankVest") Complaint as follows:

1. Defendants lack the knowledge to either admit or deny the allegations contained in this paragraph and, therefore, deny same.

2. Admitted.

3. Admitted.

4. Admitted.

5. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

6. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

COUNT I

7. The foregoing paragraphs are incorporated by reference.

8. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit A to the Complaint is a true and correct copy of the Master Equipment Lease Agreement.

9. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit B to the Complaint is a true and correct copy of Lease Schedule No. 002.

10. Defendants admit that Newark signed a document entitled "Acceptance Certificate." Defendants deny that Exhibit C to the Complaint is a true and correct copy of the

document entitled Acceptance Certificate. By way of further response, Newark executed the purported acceptance certificate before the equipment was received and in reliance on BankVest's misrepresentation that it was its normal practice to obtain acceptance certificates before it delivered the equipment and that it would not claim the acceptance certificate had any legal effect unless and until the equipment was delivered in accordance with the lease.

11. The documents speak for themselves and any attempt to summarize or characterize them is denied.

12. Defendants deny that certain of the items listed in the Lease were acquired for and received by Newark. As to the characterization of the Property as computer equipment, Defendants aver that the documents speak for themselves and any attempt to summarize or characterize them is denied. Defendants admit that Newark has not returned to BankVest any of the items received by Newark, but further avers that BankVest has not requested that Newark return the portion of the equipment that Newark did receive. Defendants further aver that Newark is ready, willing and able to return to BankVest so much of the Property as BankVest owns, but it is unwilling to deliver to BankVest the equipment that was delivered to Newark by the manufacturer as loaner equipment and which equipment additionally is not described in or made a part of the Lease.

13. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

14. Defendants lack the knowledge to either admit or deny the allegations contained in this paragraph and, therefore, deny same.

15. Denied.

16. Denied.

17. Denied.

18. Defendants admit that Newark has not returned to BankVest any of the items received by Newark, but further avers that BankVest has not requested that Newark return the portion of the equipment that Newark did receive. Defendants further aver that Newark is ready, willing and able to return to BankVest so much of the Property as BankVest owns, but it is unwilling to deliver to BankVest the equipment that was delivered to Newark by the manufacturer as loaner equipment and which equipment additionally is not described in or made a part of the Lease.

19. Defendants admit that Newark does not own the Property. The balance of the paragraph is denied.

COUNT II

20. Defendants incorporate the foregoing paragraphs.

21. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit D to the Complaint is a true and correct copy of the guaranty signed by Eagle.

22. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

23. Denied.

24. Denied.

COUNT III

25. Defendants incorporate the foregoing paragraphs.

26. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants deny that Exhibit E to the Complaint is a true and correct copy of the guaranty signed by MDAC.

27. The allegations contained in this paragraph constitute conclusions of law to which no response is required and, therefore, Defendants deny same.

28. Denied.

29. Denied.

AFFIRMATIVE DEFENSES

1. BankVest's claims are barred by the defense of failure of consideration.

2. BankVest's claims are barred by its failure to deliver the equipment that was the subject of the lease between the parties.

3. BankVest's claims are barred by the defense of promissory estoppel.

4. BankVest's claims are barred by the doctrine of waiver.

5. BankVest's claims are barred on the grounds that it fraudulently induced Newark to execute the so-called acceptance certificate.

6. The determination of whether BankVest may assume the Lease, pursuant to the provisions of section 365 of the Bankruptcy Code, has not been determined by final order. The foregoing claims are barred if BankVest ultimately rejects the Lease.

7. Count I is barred because BankVest breached the Lease before any alleged breach by Newark.

8. Counts II and III are barred because BankVest materially altered the terms of the underlying agreement without the consent of the guarantors.

COUNTERCLAIMS

Facts

1. On or about May 27, 1999, Newark entered into a Master Equipment Lease Agreement (the "Lease") with BankVest, pursuant to which Newark was to lease from BankVest approximately 190 pieces of computer equipment (the "Equipment") over a period of 48 months.

2. The rent payments under the Lease were $10,111.82 per month.

3. At the time the Lease was entered into, each of the parties involved, including BankVest, knew that BankVest's vendor, Nortel, would not complete production of approximately 20 items of the Equipment until several months later. Therefore, an arrangement was made between Newark and Nortel for Nortel to deliver to Newark loaner equipment that was similar to, but of a lesser grade than, the equipment that BankVest agreed to lease to Newark. Nortel delivered the loaner equipment to Newark in August 1999.

4. At or about the time that Nortel delivered the loaner equipment to Newark, BankVest caused to be delivered to Newark only some of the leased items that it was obliged to deliver. Excluded from the items delivered by BankVest were twenty critical items of equipment (the "Nondelivered Equipment"). The Nondelivered Equipment constituted 7 of 13 types of equipment to be delivered under the Lease and also accounted for sixty percent of the entire value of the leased goods.

5. The Nondelivered Equipment constituted the most critical components of the Equipment. Among the twenty items that had not been produced by the vendor were the computer modules and system software, while items of lesser value and importance such as power supply units, switches and cables had been produced and were delivered.

6. On December 17, 1999, an involuntary bankruptcy petition was filed against BankVest, before BankVest paid

Nortel for any of the Equipment and before the Nondelivered Equipment was delivered.

7. Despite the passage of over four years, BankVest has still not delivered the Nondelivered Equipment nor has it offered to do so.

COUNT I
(Breach of Contract)

8. Newark, Eagle and MDAC incorporate the foregoing paragraphs.

9. BankVest breached its obligations under the Lease.

10. Newark, Eagle and MDAC have suffered damages as a result of BankVest's breach of the Lease.

COUNT II
(Fraud)

11. Newark, Eagle and MDAC incorporate the foregoing paragraphs.

12. BankVest sought to induce Newark to sign an acceptance certificate, before delivery of the Equipment, by representing that BankVest would not claim that the acceptance certificate had any legal effect unless and until the Equipment was delivered in accordance with the Lease.

13. BankVest made the foregoing statements knowing that they were false or with reckless disregard for the truth.

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14. Newark relied on BankVest's material misrepresentations to its detriment by signing the acceptance certificate before receiving any of the Equipment.

15. Newark, Eagle and MDAC have suffered damages as a result of BankVest's misrepresentations.

COUNT III
(Promissory Estoppel)

16. Newark, Eagle and MDAC incorporate the foregoing paragraphs.

17. BankVest promised that it would not make use of the acceptance certificate until all of the equipment was delivered to Newark.

18. Newark, Eagle and MDAC relied on the representations made by BankVest described in paragraph 17 hereof.

19. BankVest has and continues to use the acceptance certificate in breach of its promise to Newark.

20. Newark, Eagle and MDAC have been harmed and continues to be harmed by BankVest's breach of its promise as described in paragraph 17 hereof.

Appendix D

COUNT IV
(Fraud)

21. Newark, Eagle and MDAC incorporate the foregoing paragraphs.

22. At the time that (i) BankVest and Newark executed the Lease, (ii) Newark executed the acceptance certificate and (iii) Eagle and MDAC executed the guaranties, and for all times relevant thereafter, BankVest knew that it did not have the financial wherewithal to complete its obligations to deliver all of the equipment to Newark as required by the Lease.

23. BankVest, in fact, did not have the financial wherewithal to deliver all of the equipment to Newark.

24. Absent the concealment by BankVest of its dire financial condition, Newark would not have entered into the Leases or signed the acceptance certificate. Similarly, without such concealment, the guarantors would not have signed the guaranties.

25. Newark, Eagle and MDAC have been harmed by the fraud committed by BankVest upon them.

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COUNT V
(Rescission)

26. Newark, Eagle and MDAC incorporate the foregoing paragraphs.

27. BankVest's failure to deliver the Equipment constitutes a failure of consideration.

28. BankVest fraudulently induced Newark to sign an acceptance certificate before any of the Equipment was delivered.

29. Newark is ready, willing and able to return to BankVest so much of the Property as BankVest owns, is described in the Lease and has, in fact has been delivered or caused to be delivered by BankVest to Newark thereunder.

30. Newark, Eagle and MDAC are entitled to rescission of the Lease and the guaranties.

WHEREFORE, Defendants respectfully request that the Court:

A. Enter judgment in favor of Defendants and against BankVest on Counts I through III of Plaintiff's Complaint;

B. Award damages to Newark, Eagle and MDAC; and

C. Grant such further relief as the Court deems appropriate.

Appendix D

JURY DEMAND

Defendants demand a trial by jury on all counts so triable.

NEWARK INSURANCE COMPANY, EAGLE INSURANCE COMPANY and MATERIAL DAMAGE ADJUSTMENT CORP.

By their attorneys,

s/ Richard P. O'Neil
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Dated: April 1, 2004

[Certificate of Service Intentionally Omitted]